IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 5503 of 2005(E)

PETITIONERS / COUNTER PETITIONERS IN I.A.3124/04 & 5018/04 AND PETITIONERS IN I.A.5329/2004 - DEFENDANTS:

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1. JOHNSON NADAR, S/O. CHELLAPPAN NADAR,
PALODE VILA, PARASSALA VILLAGE AND P.O.,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM.

2. MANIYAN NADAR, S/O. CHELLAPPAN NADAR,
MELE ARAPURA PUTHEN VEEDU, OORAKKATTU VILA,
-DO- VILLAGE, -DO-.

BY ADV. SRI.S.JAMES VINCENT
SRI.TERRY V.JAMES

RESPONDENTS / PETITIONERS IN I.A.3124/04 & 5018/04 AND CR. PETITIONERS IN I.A.5329/04 - PLAINTIFFS:

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1. CHANDRASEKHARAN NAIR,
S/O. PARAMESWARAN PILLAI, NADUVEEDU,
PARASSALA VILLAGE AND P.O., NEYYATTINKARA TALUK.

2. VIJAYALAKSHMI AMMA, -DO- -DO-.

BY ADV. SRI.L.MOHANAN FOR R1 AND 2.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	COPY OF SALE DEED NO.3777/1960 (ITEM NO.3) DTD. 31.5.1960 OF THE PARASSALA SUB REGISTRY.
EXT.P2:	COPY OF SALE DEED NO.976/1970 DTD. 27.5.1970.
EXT.P3:	COPY OF THE DELIVERY LIST DTD. 14.12.1983 IN O.S.NO.104/1968 OF THE MUNSIFF'S COURT, NEYYATTINKARA.
EXT.P3(a):	COPY OF THE SURVEY PLAN OF THE PROPERTY INTER ALIA IN SY.NO.170/11 PREPARED BY THE COMMISSIONER IN - DO-
EXT.P4:	COPY OF JUDGMENT DTD. 30.9.1992 IN O.S.247/91 OF THE MUNSIFF COURT, NEYYATTINKARA..
EXT.P4(a):	COPY OF DECREE DTD. 30.9.1992 IN O.S.247/91 OF THE MUNSIFF'S COURT, NEYYATTINKARA.
EXT.P5:	COPY OF JUDGMENT DTD. 7.8.1998 IN A.S.796/1994 OF THE SUBORDINATE JUDGE'S COURT, NEYYATTINKARA.
EXT.P6:	COPY OF THE IMPUGNED JUDGMENT DTD. 2.4.2004 IN W.P.(C).NO.8910/2004 OF THE HON'BLE HIGH COURT OF KERALA.
EXT.P7:	COPY OF SHAM SALE DEED NO. 2545/2003 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF HIS NIECE.
EXT.P8:	COPY OF THE PLAINT DTD. 12.7.2004 IN O.S.490/2004 OF THE MUNSIFF'S COURT, NEYYATTINKARA.
EXT.P9:	COPY OF I.A.3124/2004 IN O.S.490/2004 OF - DO-
EXT.P10:	COPY OF EX-PARTE ORDER OF INJUNCTION DTD. 14.7.2004.
EXT.P11:	COPY OF WRITTEN STATEMENT IN O.S.490/2004.
EXT.P12:	COPY OF THE OBJECTIONS TO THE APPLICATION FOR INJUNCTION.
EXT.P13:	COPY OF ORDER OF CONFIRMATION DTD. 12.8.2004 OF THE EX-PARTE ORDER OF INJUNCTION.
EXT.P14:	COPY OF I.A.NO.5268/2004 DTD. 24.11.2004 FOR DISCHARGING THE ORDER OF INJUNCTION.
EXT.P15:	COPY OF I.A.NO.5267/2004 DTD. 24.11.2004 FOR HEARING THE QUESTION OF RES JUDICATA AS A PRELIMINARY ISSUE.
EXT.P16:	COPY OF OBJECTIONS FILED BY THE RESPONDENTS ON 4.12.2004 AGAINST I.A.NO.5267/2004.

EXT.P17: COPY OF I.A.NO.5018/2004 FILED BY THE RESPONDENTS FOR MEASURING OUT THE PLAINT SCHEDULE PROPERTY ON THE BASIS OF THE DOCUMENTS PRODUCED BY THEM AND FOR NOTING OTHER FACTS.

EXT.P18: COPY OF OBJECTIONS FILED BY PETITIONERS TO I.A.5018/2004.

EXT.P19: COPY OF I.A.NO.5329/2004 FILED BY THE PETITIONERS FOR NOTING CERTAIN MATTERS AND FOR MEASURING THE PROPERTY IN SY.NO.170/11.

EXT.P20: COPY OF COMMON ORDER DTD. 20.12.2004 ON I.A.NOS. 5018 & 5329/2004 IN O.S.NO.490/2004.

EXT.P21: COPY OF THE ORDER DTD. 7.4.2006 IN R.P.NO.174/2005 IN W.P.(C). NO.8910/2004 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.P22: COPY OF THE SURVEY SKETCH OF THE SUIT PROPERTY ISSUED FROM THE CENTRAL SURVEY OFFICE, THIRUVANANTHAPURAM IN MARCH 2005.

EXT.P23: COPY OF THE PETITION SUBMITTED BY THE 2ND PETITIONER AND HIS WIFE TO THE SUB INSPECTOR OF POLICE, PARASSALA, ON 6.11.2006.

RESPONDENT'S EXHIBITS: NIL

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// TRUE COPY//

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 5503 of 2005

Dated this the 25th day of July , 2007

JUDGMENT

Heard both sides. Even though all the submissions of the learned counsel for the petitioners were very stoutly resisted by the learned counsel for the respondents, I am of the view that there is justification for directing the learned Munsiff to take fresh decision on the issue seen decided under Ext.P1 as well as Ext.P20. Ext.P10 is an ex-parte order of injunction. The learned counsel for the petitioners submitted that the mandates of clause (a) of the Proviso to Order 39 Rule 3 of C.P.C. were not complied with by the learned Munsiff while passing Ext.P10. I do not propose to go into the merits of the above submission. But, I find that this court became inclined to grant the stay of operation of Ext.P10 and later became inclined to grant stay of all proceedings in the suit itself. Several grounds have been raised by the petitioners in this writ petition against the grant of an interim order in favour of the respondents. I permit the

petitioners to file a detailed counter affidavit in I.A. No.3124/2004. If the petitioners file a counter affidavit in I.A. 3124/2004 and produce all the documents upon which they intend to rely within one month from today, the learned Munsiff will hear both sides on I.A.3124/2004 and pass fresh orders on merits.

2. Ext.P20 order, which is also impugned, is a common order passed by the learned Munsiff on two commission applications filed by the petitioners and the plaintiffs/ respondents. Unlike Ext.P10, which is an ex parte order, and Ext.P13, which is passed on the basis that no objections have been filed, Ext.P20 can be seen to be an order passed after hearing both sides. But Sri.S.James Vincent the learned counsel for the petitioners submits that the learned Munsiff became inclined to allow the applications including the application filed by the respondents and to repell the contention of the petitioners that the suit itself is not maintainable/barred by rest judicata relying on the judgment of this curt in W.P.(C) No. 8910/2004. The learned counsel has placed before me a copy of the order dated 7.4.2006 in R.P. No. 174/2005 which would show

that the judgment in W.P.(C) No.8910/2004 was later reviewed to the extent of permitting the petitioners to raise the plea of res judicata also in any suit which may be filed by the respondents. In fact Ext.P15 (I.A.No.5267/2004) has been filed by the petitioners for taking an early decision on the issue of res judicata which according to the petitioners arises in the suit. Obviously the order in R.P. No.174/2005 was not before the learned Munsiff when he passed Ext.P20. I am, therefore, of the view that it is necessary for the learned Munsiff to pass fresh orders on both the commission applications in the light of the order in R.P. No.174/2005. I set aside Ext.P20 and direct reconsideration by the learned Munsiff taking into account implications of Ext.P21 order in R.P. also. Since Ext.P15 is pending, the learned Munsiff will take an early decision on Ext.P15 i.e. within two months of receiving a copy of this judgment.

3. The learned counsel for the respondents would strenuously submits that the commissioner has already filed his report pursuant to Ext.P20 and therefore at least to the extent the writ petition pertains to Ext.P20 it has to be found that the

writ petition is infructuous. It is for the court below to ascertain whether the Advocate Commissioner was having information regarding the absolute stay order which had been passed by this court in respect of the entire suit proceedings when he went about with the work of executing the commission work. The probative value of the Commission report already obtained is a matter for the learned Munsiff to decide when the suit ultimately goes for trial. The order of stay passed by this court in respect of Ext.P13 interim order of injunction will continue in force till such time as the learned Munsiff passes fresh orders on the injunction petition pursuant to this judgment.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

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